IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7168 OF 2006

Shakuntala Waman Danane)
Aged : 43 years, Hindu, Indian)
inhabitant of Mumbai, Occupation :)
domestic work, residing at B.D.D)
Chawl No.39, Room No.66, Dr.)
Bhosale Marg, Worli, Mumbai-400 018)..Petitioner

Versus

1. The Chief General Manager,)
MTNL, Telephone House, Veer)
Savarkar Marg, Prabhadevi,)
Mumbai-400 025)

2. Deputy General Manager (Adm))
MTNL, Telephone House,)
Prabhadevi, Mumbai-400 028)

3. Smt.Chhaya Waman Danane,)
an adult, presently residing)
at C/o Ashok Baburao Mane,)
Building No.192, Room No.2040)
Sector No.6, Kane Nagar, S.M.D.)
Road, Antop Hill, Mumbai-37)..Respondents

Mr.Ashok G.Toraskar & Manoj S.Chatage for the petitioner.

Gautam Hiranandani and Nitin Vhatkar for Respondent Nos.1 & 2.

Mrs.S.I.Shah for Respondent no.3.

Coram : S.B.Mhase &
R.S.Mohite,JJ

Date : 5.4.2007.

Oral order :- (Per : S.B.Mhase,J)

1. Heard.

2. Rule, returnable forthwith.

3. The petitioner and respondent no.3 are the wives of the deceased Waman Danane who was working with the respondent nos.1 & 2. He died at the age of 40 on 7.1.1998. After his death, there was a dispute amongst the petitioner and respondent no.3 in respect of the pensionary benefits and the compassionate appointment to be made in view of the death of their husband Waman Danane. Therefore, Writ Petition No.5524 of 2000 was filed before this Court for certain reliefs. In the said petition, alongwith respondent no.3, the respondent nos.1 & 2 and Union of India were parties. The said petition was disposed off after grant of rule by order dated 22.12.2000. The respondent nos.1 & 2 were directed to consider the applications made by the petitioner as well as respondent no.3 for compassionate appointment on their individual merit in accordance with the rules and regulations, and appoint either the petitioner or respondent no.3 provided either of them is found to be suitable and subject to availability of vacancy. It was further directed that till the applications for compassionate appointment are decided the amount of pension shall be apportioned between the petitioner and respondent no.3 equally. In case the petitioner or respondent no.3 gets appointment on compassionate ground the entire amount of pension would be payable to the party which does not succeed in getting the job. Further it was clarified that if both petitioner and

respondent no.3 fail to get the job on compassionate ground, the pension was continued to be distributed in equal shares between the petitioner and respondent no.3. Respondent no.3 is restrained from withdrawing the amount of Rs.20,000/- which is kept in fixed deposit as per the directions of this Court till further order.

4. In view of this order, both, petitioner and the respondent no.3 have preferred an application immediately with the respondent nos.1 & 2. However, respondent nos.1 & 2 have not considered the said applications and therefore, the petitioner has approached to this Court.

5. Now, the respondent nos.1 & 2 have come with the affidavit that there is a ban on the recruitment on compassionate grounds and therefore, the applications cannot be considered. Except this, no other ground is raised.

6. The so-called ban has been introduced by a Circular/letter dated 8.3.2004 issued by the General Manager (Human Resources of respondent nos.1 & 2). However, the aforesaid directions were given by this Court on 22.12.2002. The applications were pending even prior to this date. Thus, the applications were not considered even though there was no ban. Now, only a pretext is taken when the petitioner has

approached to this Court that there is a ban for consideration of the said applications. However, we are not inclined to accept the said contention raised by respondent nos.1 & 2 in view of the Apex Court's judgment in the case of **Smt.Sushma Gosain and Ors. V/s. Union of India & Ors. reported in AIR 1989 SUPREME COURT 1976.** It has been observed by the Apex Court that :-

> "It can be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accomodate the applicant. In the instant case the applicant's husband was working as storekeeper in the department of Director General Border Road, died in 1982. The applicant soon thereafter sought appointment as LDC on compassionate grounds. She passed trade test but she

> was not appointed and she was being told that her case was under consideration. Her application was rejected in 1985 when ban on appointment of ladies was imposed. In such facts, the Apex Court held that denial of her appointment was patently arbitrary and had to be set aside."

7. If we take into consideration the facts and the observations made by the Apex Court in the above referred matter, the present case is squarely covered by the said judgment. In the present matter also the application was immediately made after the death of the husband of the petitioner and respondent no.3. The said application was pending when the earlier petition was filed. The directions were given that the said application should be considered and to find out a suitable candidate out of the petitioner and respondent no.3 and appoint them. The said order was passed when respondent nos.1 & 2 were parties to that petition and it was binding on them. For the reasons best known to them, for years together thereafter the matter was not considered. When the petitioner has approached to this Court, they pretext to this Court that there was a ban. The said ban is of the year 2004. There is no explanation why the application was not considered till 2004 inspite of the orders passed by the division bench of this Court.

8. Under these circumstances, we direct the respondent nos.1 & 2 that they shall consider the applications of the petitioner and the respondent no.3 and find out one of them suitable for appointment. We further direct that if the post is not available, the respondent nos.1 & 2 will create supernumerary post within 3 months. All this exercise should be completed within a period of 3 months from today. We make it clear that the order passed in the earlier Writ petition in respect of the pension and other benefits will remain into force and applicable to the parties. So far as the prayer clause-(b) is concerned, the petition is allowed to be withdrawn with a liberty to file appropriate proceedings in appropriate Court of law. Rule made absolute accordingly.

(R.S.Mohite,J) **(S.B.Mhase,J)**